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June 29, 2016

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UNITED STATES DISTRICT COURT

NORTHER DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs. Civil Action No.
5:14-cv-5344-BLF

ARISTA NETWORKS, INC.,

Defendants.

_____ /

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

SUBJECT TO PROTECTIVE ORDER

VIDEO RECORDED DEPOSITION OF EXPERT WILLIAM M. SEIFERT

JUNE 29, 2016

9:51 A.M.

50 California Street, 21st Floor

San Francisco, California

REPORTED BY:

Mark W. Banta

CSR No. 6034, CRR

1 ability of one network device to communicate with another
2 network device and potentially with a human in like or
3 similar fashion.

4 BY MR. NEUKOM:

5 Q. Can you identify for me any -- any material
6 anywhere that has defined -- other than your report --
7 that has defined interoperability in the networking
8 context to refer to the interactions between a device and
9 a human user?

10 MS. McCLOSKEY: Objection. Vague. Overbroad.
11 Asked and answered.

12 THE WITNESS: No.

13 BY MR. NEUKOM:

14 Q. If you could please turn to paragraph 6 of your
15 report, I'm looking in particular at the following
16 phrase, quote:

17 "This report focuses on the development of
18 de facto industry standards -- ones that emerge
19 over time as a result of widespread adoption
20 throughout a given industry."

21 Do you see what I'm referring to?

22 A. Yes.

23 Q. This material that you've put in the dash,
24 specifically, "ones that emerge over time as a result of
25 widespread adoption throughout a given industry," is that

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10:20:49 1 your definition of what constitutes a de facto industry
2 standard?

3 MS. McCLOSKEY: Objection. Vague.

4 THE WITNESS: I think this is one of the
10:20:58 5 characteristics, not the only one, no.

6 BY MR. NEUKOM:

7 Q. Other than the emergence over time -- pardon me,
8 other than widespread adoption throughout a given
9 industry, can you identify for me other characteristics,
10:21:19 10 any and all, for a de facto industry standard?

11 MS. McCLOSKEY: Objection. Calls for
12 speculation.

13 THE WITNESS: So again, for purposes of this
14 report and the purposes for which Arista has asked me to
10:21:34 15 focus on de facto standards in the networking industry in
16 particular, computer industry generally, I have a simple
17 test. It's sort of four component to this: That
18 de facto standards' ones that come about because they're
19 commonly used as opposed to being drafted and adopted by
10:21:56 20 a formal standards organization.

21 A de facto standard is one which has I think
22 roughly four characteristics. One, the market size must
23 be sufficiently large; two, there must be enough -- there
24 must be sufficient number of market participants, namely,
10:22:17 25 suppliers and consumers, suppliers in this instance being

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1 vendors of networking equipment, the consumers being
2 those who buy the networking equipment and operate them
3 in their networks; third, that there are scarce human
4 resources available especially to implement and deploy
5 the vendors' equipment and the customers' networks for
6 several reasons, but simply observing that the human
7 resources are scarce and not plentiful; and fourth, that
8 the resultant system is sufficiently complex that one has
9 to look for ways to simplify especially the human
10 interactions with, deployment of, maintenance,
11 troubleshooting, and general operation of the network.

12 So those four, if you will, forces essentially
13 combine to create a situation where customers start
14 demanding certain activities, certain functionality in
15 the equipment be standardized.

16 BY MR. NEUKOM:

17 Q. Other than your expert report, can you identify
18 for me anyone else who has ever adopted this definition
19 of a de facto industry standard?

20 MS. McCLOSKEY: Objection. Vague.

21 THE WITNESS: No.

22 BY MR. NEUKOM:

23 Q. Can you identify for me anyone else or any other
24 document other than your expert report in which this
25 definition of a de facto industry standard has been

10:24:25 1 proposed?

2 MS. McCLOSKEY: Objection. Asked and answered

3 and vague.

4 THE WITNESS: No.

10:24:32 5 BY MR. NEUKOM:

6 Q. So for purposes of preparing your expert report
7 which covers, among other issues, a de facto industry
8 standard, you formulated anew this understanding of a
9 de facto industry standard?

10:24:48 10 MS. McCLOSKEY: Objection. Mischaracterizes
11 prior testimony.

12 THE WITNESS: I don't agree that it's a new
13 definition. This is simply my -- my words based on my
14 experience, my involvement with three startup companies
10:25:05 15 that were in fact network equipment manufacturers, and
16 numerous interaction with customers over 30 years of
17 experience in this industry.

18 BY MR. NEUKOM:

19 Q. Before your involvement in this case, had you
10:25:20 20 ever shared with anyone this understanding of a de facto
21 industry standard?

22 MS. McCLOSKEY: Objection. Vague.

23 THE WITNESS: I -- I can't remember if I did or
24 not.

25 //

10:25:31 1 BY MR. NEUKOM:

2 Q. Okay. I think you testified that the first of
3 four elements or criteria for an industry standard or
4 de facto industry standard was that the market size must
5 be sufficiently large. Do I have that right so far?

6 A. Yes.

7 Q. Okay. How would I discern if I wanted to find
8 out if the market size was sufficiently versus
9 insufficiently large? How do I -- what's the criteria
10 there? How do I make that call?

11 MS. McCLOSKEY: Objection. Vague. Overbroad.
12 Calls for speculation.

13 THE WITNESS: I don't think there's a
14 quantitative answer to that. In my view, in my
15 experience in the networking industry is that it requires
16 a simple subjective test, business judgment, to make that
17 determination. And each vendor likely is going to make
18 its own independent of all -- all others.

19 BY MR. NEUKOM:

10:26:48 20 Q. For the second criteria or defining element of a
21 de facto industry standard as you've explained it today,
22 by what criteria do you judge whether there's a
23 sufficient number of market participants using the -- the
24 subject matter at issue for it to constitute a de facto
10:27:08 25 industry standard?

10:27:09 1 MS. McCLOSKEY: Objection. Vague and overbroad.

2 THE WITNESS: So I would say that, again, this

3 is largely subjective thresholds in terms of market

4 participants, that the buyers have a lot to say about

10:27:28 5 this, in fact, they determine. It's a question of what

6 the vendors do about what the customers ask.

7 BY MR. NEUKOM:

8 Q. Okay. For the third element of a de facto

9 industry standard as you've explained it today which I'm

10:27:42 10 going to refer to in shorthand as the scarcity of human

11 resources, how do you -- how do you make a determination

12 whether the human resources are scarce enough to satisfy

13 this element of a de facto industry standard, as you've

14 explained it?

10:27:58 15 MS. McCLOSKEY: Objection. Vague. Overbroad.

16 Calls for speculation.

17 THE WITNESS: So I think one way to characterize

18 the scarcity of human resources when it came -- when it

19 came to the development of the networking industry was --

10:28:13 20 one indication was when the customers would ask the

21 vendors for assistance in deploying, installing,

22 configuring, managing, in some cases even operating their

23 networks.

24 BY MR. NEUKOM:

10:28:30 25 Q. Thank you for that. I understand that's --

10:28:34 1 that's one basis pursuant to which you believe that
2 Cisco's CLI is de facto industry standard, the history of
3 customers asking for help in this context. Do I have
4 that right?

10:28:49 5 MS. McCLOSKEY: Objection. Misstates testimony.
6 THE WITNESS: As I understand the question, yes.
7 BY MR. NEUKOM:

8 Q. Okay. So I need to be asking something slightly
9 different, which is: Before a particular technology
10 becomes a de facto industry standard as you've explained
11 it in your report and today, that technology would have
12 to satisfy four defining elements. Am I right so far?
13 A. In my opinion, yes.

14 Q. Okay. And the third of those defining elements
15 would be a scarcity of human resources available to
16 deploy the equipment or the technology at issue?
17 A. Yes.

10:29:19 18 Q. Okay. So my question to you is: How do you --
19 how do you make a determination of whether the human
20 resources available to deploy the equipment are scarce
21 enough or, by contrast, abundant enough to satisfy this
22 element of a definition of a de facto industry standard?
23 MS. McCLOSKEY: Objection. Vague. Overbroad.
24 Calls for speculation.

10:29:54 25 THE WITNESS: Well, again, I think the customers

10:29:55 1 are the guide by which any vendor is going to make this
2 determination. And like I said a minute ago, the
3 customers will say -- will tell the manufacturer or their
4 agent, their distribution channel partner, that they need
10:30:14 5 assistance, they need training, they may -- they may
6 require on-site assistance from the manufacturers'
7 engineers. Any other number of factors would go into
8 that determination as to whether or not there was a
9 sufficient, you know, human capital available within the
10:30:34 10 customer's organization to do what they needed to do.

11 BY MR. NEUKOM:

12 Q. Can you identify for me what -- you testified a
13 minute ago "any other number of factors would go into
14 that determination." What other factors would go into
10:30:50 15 that determination?

16 MS. McCLOSKEY: Objection. Calls for
17 speculation. Vague.

18 THE WITNESS: So many times the network design
19 may be unclear to the customer, so they need assistance
10:31:04 20 in just knowing what they need to put together and what
21 they need to purchase. So there's a long list of things
22 that go into designing, purchasing, installing,
23 configuring, and operating a network. No -- no two are
24 alike, and typically the customers do ask for assistance
10:31:25 25 from the manufacturer in -- in potentially several forms.

10:31:31 1 BY MR. NEUKOM:

2 Q. Okay. How many customers have to ask for
3 assistance in order for this third element of a de facto
4 industry standard to be met?

10:31:41 5 MS. McCLOSKEY: Objection. Calls for
6 speculation. Vague.

7 THE WITNESS: I don't know. I'm not sure that
8 there's a quan -- there's no quantitative answer to that.
9 If the customers feel the pain they'll ask.

10:31:54 10 BY MR. NEUKOM:

11 Q. Okay. So I think before when you explained for
12 me what market size is or isn't sufficient enough to
13 satisfy the first element of a de facto industry standard
14 you explained that that is a -- a fact-specific inquiry
15 that includes a subjective element. Is that fair?

16 MS. McCLOSKEY: Objection. Misstates prior
17 testimony.

18 THE WITNESS: Could you rephrase? I'm not sure
19 I understand the question.

10:32:21 20 BY MR. NEUKOM:

21 Q. Sure. Let me try to make it simpler.
22 I asked you earlier to explain for me how you
23 would make a determination whether a particular
24 technology satisfies the first element of a de facto
10:32:32 25 industry standard as you have explained that concept in

10:32:35 1 your report and today. Are you with me so far?

2 A. Yes.

3 Q. Okay. And one aspect of your answer was to

4 explain to me that making that determination includes a

10:32:50 5 subjective analysis.

6 A. Yes.

7 Q. Okay. Likewise, when I asked you to explain the

8 second element of a de facto industry standard whether a

9 particular technology -- whether there's a sufficient

10:33:08 10 number of market participants at issue, making that

11 determination of sufficiency or insufficiency likewise

12 includes a subjective analysis and conclusion.

13 MS. McCLOSKEY: Objection. Misstates prior

14 testimony.

10:33:22 15 THE WITNESS: I believe I said that it was

16 subjective in terms of making a business judgment.

17 BY MR. NEUKOM:

18 Q. Okay. So for this third element, I just want to

19 make sure I'm understanding your testimony. To make a

10:33:37 20 determination about whether the human resources are

21 available to deploy the technology, the equipment at

22 issue, whether they are scarce enough to satisfy this

23 third element of a de facto industry standard as you've

24 explained it, is that also a multi-factor subjective

10:33:54 25 inquiry and conclusion?

10:33:56 1 MS. McCLOSKEY: Objection. Vague. Overbroad.
2 THE WITNESS: Well, I don't think it's
3 subjective if the customers come and ask you for help.
4 So that was one of the things I tried to illustrate a
10:34:07 5 minute ago. So no, I don't believe so.
6 BY MR. NEUKOM:
7 Q. How many customers have to ask for help in
8 deploying a particular technology in order for it to
9 satisfy your third element of a de facto industry
10:34:16 10 standard?
11 MS. McCLOSKEY: Objection. Asked and answered.
12 Vague. Ambiguous.
13 THE WITNESS: And again, sort of business
14 judgment in terms of opportunity, opportunity costs, all
10:34:30 15 the elements that go into making a determination as a...
16 as a business.
17 BY MR. NEUKOM:
18 Q. Okay. And that business judgment that you would
19 apply to make a determination of whether the third
10:34:41 20 element of a de facto industry standard has been
21 satisfied or not, that business judgment would also
22 include a subjective analysis?
23 MS. McCLOSKEY: Objection. Misstates prior
24 testimony. Vague. Calls for speculation.
10:34:56 25 THE WITNESS: Well, to the extent that any

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10:34:58 1 business judgment is done by human beings, there's always
2 going to be some subjectivity involved. So yes, to that
3 extent.

4 But generally, businessmen try to make
10:35:09 5 determinations based on what their customers' needs are,
6 what they're willing to pay for, what kind of resources
7 the company has to support the customer with, and what
8 other actions might be available to satisfy the
9 customers' requirements.

10:35:28 10 BY MR. NEUKOM:

11 Q. For the fourth element of -- or the fourth
12 required element of a de facto industry standard as
13 you've explained it, I think you explained that the
14 question is whether the resulting system is sufficiently
10:35:44 15 complex. And I know I'm -- I'm abbreviating your prior
16 answer, but is that a fair recitation of the fourth
17 element of a de facto industry standard as you've
18 explained it?

19 MS. McCLOSKEY: Objection. Misstates prior
10:36:01 20 testimony.

21 THE WITNESS: I think that's fair enough.

22 BY MR. NEUKOM:

23 Q. Okay. How do you make the determination whether
24 the resulting system is sufficiently versus
10:36:10 25 insufficiently complex in order to satisfy this fourth

10:36:15 1 required element of a de facto industry standard as
2 you've explained it?
3 MS. McCLOSKEY: Objection. Vague. Overbroad.
4 THE WITNESS: Again, complexity is oftentimes in
10:36:30 5 the eye of the beholder. In this case, the beholder's
6 eye that matters is that of the customer and his
7 employees, and what they're trying to do with their
8 network and the network equipment that they purchase
9 from -- from a vendor.
10:36:46 10 BY MR. NEUKOM:
11 Q. When you say "complexity is oftentimes in the
12 eye of the beholder," are you -- are you telling me that
13 whether a particular technology is sufficiently complex
14 to satisfy this fourth element of a de facto industry
10:37:02 15 standard depends upon an individual's perspective?
16 MS. McCLOSKEY: Objection. Vague. Ambiguous.
17 Misstates prior testimony.
18 THE WITNESS: No, I don't agree that it implies
19 an individual perspective. I think it's more a
10:37:19 20 collective perspective on the part of an organization.
21 BY MR. NEUKOM:
22 Q. Okay. So as you've explained it to me, whether
23 a technology satisfies the fourth element of a de facto
24 industry standard, namely, whether the technology at
10:37:34 25 issue -- at issue is sufficiently complex, that

10:37:37 1 determination would be made by one or more individuals
2 within a company exercising their business judgment. Is
3 that accurate?

4 MS. McCLOSKEY: Objection. Misstates prior
10:37:48 5 testimony.

6 THE WITNESS: I think that's partially accurate,
7 yes.

8 BY MR. NEUKOM:

9 Q. Is it also fair to say that in making a
10:37:58 10 determination about whether a particular technology
11 satisfies this fourth required element of a de facto
12 industry standard, that also includes a subjective
13 analysis and conclusion?

14 MS. McCLOSKEY: Objection. Misstates prior
10:38:11 15 testimony. Vague.

16 THE WITNESS: Well, again, as I stated earlier,
17 we are talking about humans dealing with in many cases
18 complex or unfamiliar technologies in which case human
19 beings are always going to have some subjective element
10:38:30 20 to their -- to their determination.

21 BY MR. NEUKOM:

22 Q. In paragraph 6 you refer to the TCP/IP software
23 protocol as an early example of a de facto industry
24 standard. Do you see what I'm referring to?

10:38:54 25 A. I do.

10:38:55 1 Q. You understand that the TCP/IP software protocol
2 has in subsequent years been proposed to and adopted by
3 one or more standard-setting organizations as a I think
4 what you would call a de jure industry standard?

10:39:14 5 A. Yes. That's true. But it didn't start out that
6 way.

7 Q. You also refer to, in paragraph 6, to the 4.2BSD
8 version of Unix as an early example of a de facto
9 industry standard? Do I have that right?

10:39:37 10 A. Yes.

11 Q. Did 4.2BSD, did that version of Unix
12 subsequently get proposed to and adopted by one or more
13 standard-setting organizations as a de jure industry
14 standard?

10:39:51 15 A. I don't believe so, no.

16 Q. If you turn to paragraph 8 of your report, it's
17 on page 3, I'm looking at the following sentence: "Cisco
18 did not develop its own CLI until the early 1990s." Do
19 you see what I'm referring to?

10:40:15 20 A. Yes.

21 Q. What was your basis for making that statement?

22 MS. McCLOSKEY: Objection. Vague. Overbroad.

23 THE WITNESS: One, my own experience with Cisco
24 as a competitor through a company I started in the 1980s
10:40:33 25 called Wellfleet Communications and my familiarity with

10:40:37 1 equipment at the time, and in addition, we did have
2 conversations with a person who was responsible for
3 writing their CLI.

4 BY MR. NEUKOM:

10:40:47 5 Q. Who is that?

6 A. This was Kirk McKusick.

7 Q. And when you refer to, "its own CLI," I take it
8 you're referring to your definition of Cisco's CLI from
9 the first paragraph of your report?

10:41:04 10 MS. McCLOSKEY: Objection. Misstates prior
11 testimony. Vague.

12 THE WITNESS: The CLI of Cisco's I am quite
13 certain has evolved over time since its original
14 incarnation, so it would not be exactly the same now as
10:41:21 15 it was then, of course.

16 BY MR. NEUKOM:

17 Q. Okay. I think in paragraph 1 you explain to the
18 reader that when you refer to Cisco's CLI you're
19 referring to the particular commands, modes, prompts,
10:41:42 20 hierarchies, et cetera, that Cisco is asserting Arista
21 copied. Do I have that right?

22 MS. McCLOSKEY: Objection. Misstates prior
23 testimony. And vague.

10:41:58 24 THE WITNESS: In this case, I'm using the CLI
25 generically to describe a CLI, not the CLI as it

10:42:04 1 currently exists in today's Cisco products, no.

2 BY MR. NEUKOM:

3 Q. Okay. So in paragraph 8 when you write "Cisco

4 did not develop its own CLI until the early 1990s," what

10:42:20 5 CLI are you referring to?

6 MS. McCLOSKEY: Objection. Vague.

7 THE WITNESS: Again, CLI is a common term,

8 command line interpreter, used generically amongst many

9 manufacturers, many points and many products, so in this

10:42:34 10 particular sentence I'm using CLI in the generic sense of

11 the term.

12 BY MR. NEUKOM:

13 Q. Okay. And I think a minute ago you said that

14 CLI stands for a command line interpreter? Did you mean

10:42:46 15 line command line interface?

16 A. It has -- people use it both ways. Both

17 definitions are interchangeable.

18 Q. Okay. So when you write here in paragraph 8:

19 "Cisco did not develop its own CLI until the early

10:42:59 20 1990s," you're referring to CLI in what you've just

21 described as the generic sense of the word?

22 A. Yes.

23 Q. Any command line interface for interaction

24 between a human and an operating system that enables the

10:43:14 25 configuration and management of routers and switches?

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10:43:17 1 MS. McCLOSKEY: Objection. Asked and answered.
2 Vague. Overbroad.
3 THE WITNESS: In the networking industry, yes.
4 But CLIs are found in other devices in other -- in
10:43:26 5 computing systems and -- and other non-network devices,
6 as well.
7 BY MR. NEUKOM:
8 Q. Are you aware that Cisco offered a CLI in the
9 1980s?
10:43:35 10 MS. McCLOSKEY: Objection. Lacks foundation.
11 Vague.
12 THE WITNESS: No.
13 BY MR. NEUKOM:
14 Q. Did you undertake any -- did you take any
10:43:50 15 efforts to try to verify this understanding that Cisco
16 did not offer any CLI of any stripe until the 1990s when
17 you were preparing your report?
18 MS. McCLOSKEY: Objection. Vague.
19 THE WITNESS: I'm sorry. Rephrase the question?
10:44:04 20 Did I --
21 BY MR. NEUKOM:
22 Q. Sure. Fair enough. Poorly-phrased question.
23 Let me restate it.
24 I think I've heard you to testify today that
10:44:14 25 according to your memory and your background in the

10:44:16 1 industry Cisco did not offer any CLI to the market until
2 the 1990s. Do I have that right so far?
3 MS. McCLOSKEY: Objection. Misstates prior
4 testimony.
10:44:31 5 THE WITNESS: Yes, I believe you do.
6 BY MR. NEUKOM:
7 Q. Okay. So all I'm asking now is in the process
8 of preparing your report did you do anything to confirm
9 or investigate this understanding of yours that Cisco did
10:44:44 10 not release or offer a CLI to the market until the 1990s?
11 MS. McCLOSKEY: Objection. Vague. Assumes
12 facts.
13 THE WITNESS: Yes.
14 BY MR. NEUKOM:
10:44:53 15 Q. What steps were those? Or what efforts were
16 those?
17 A. Well, principally, trying to find user manuals
18 or user documentation from the late '80s. So some were
19 successful and some I could not locate. It's hard to
10:45:09 20 find manuals and user guides from any manufacturer from
21 that time period.
22 BY MR. NEUKOM:
23 Q. Okay. So is it safe to say that in the process
24 of preparing this report you did not review any Cisco
10:45:25 25 CLI-related materials that were dated earlier than 1990?

10:45:30 1 MS. McCLOSKEY: Objection. Misstates prior
2 testimony. Vague.
3 THE WITNESS: I don't believe so, no.
4 MS. McCLOSKEY: Jay, we've been going about an
10:45:45 5 hour. Is now an okay time for a quick break?
6 MR. NEUKOM: Sure.
7 THE VIDEOGRAPHER: Off the record, 10:45 a.m.
8 (Recess taken from 10:45 to 10:54 a.m.)
9 THE VIDEOGRAPHER: On the record, 10:54 a.m.
10:54:32 10 BY MR. NEUKOM:
11 Q. Looking at paragraph 9 of your report, sir, I'm
12 looking at the following sentence: "As networks grew in
13 size and number, customers began to demand a standard CLI
14 for networked device, including switches and routers."
10:54:52 15 Do you see what I'm referring to?
16 A. Yes.
17 Q. When you say that customers began to demand a
18 standard CLI, when did that happen?
19 MS. McCLOSKEY: Objection. Vague. Calls for
10:55:05 20 speculation.
21 THE WITNESS: I can't recall an exact date or
22 year.
23 BY MR. NEUKOM:
24 Q. Do you know if it was in the 1980s versus the
10:55:19 25 1990s?

10:55:20 1 A. No. It could not have been in the 1980s.

2 Q. Okay. So to the best of your memory, although
3 you can't tell me the year, it's your testimony that
4 customers began to demand a standard CLI for networked
10:55:35 5 devices at some point in the 1990s?

6 A. Yes.

7 Q. Do you know if that was in the early, middle,
8 late 1990s?

9 MS. McCLOSKEY: Objection. Asked and answered.

10:55:47 10 The witness has already testified that he can't
11 identify --

12 MR. NEUKOM: No, no.

13 MS. McCLOSKEY: -- an exact date.

14 MR. NEUKOM: No, no, no, no, no. You can say
10:55:52 15 "asked and answered" but you can't then start reciting
16 what you want him to have just said.

17 THE WITNESS: No, I don't remember exactly when
18 in the '90s.

19 BY MR. NEUKOM:

10:56:01 20 Q. Okay. Later in paragraph 9 you wrote: "As
21 Cisco's market share grew, Cisco's CLI was widely
22 accepted as an industry standard." Do you see what I'm
23 referring to?

24 A. I do.

10:56:16 25 Q. When did Cisco's market share grow to a point

10:56:19 1 such that it's your opinion that its CLI was widely
2 accepted as industry standard?
3 MS. McCLOSKEY: Objection. Vague.
4 THE WITNESS: I can't say, again, the exact
10:56:32 5 year.
6 BY MR. NEUKOM:
7 Q. If you can't provide for me an exact year, can
8 you give me any other explanation of when, at what point
9 in time, according to your testimony, Cisco became --
10:56:52 10 Cisco's CLI was widely accepted as an industry standard?
11 MS. McCLOSKEY: Objection. Asked and answered.
12 THE WITNESS: So I think that further in my
13 report, if we ever get past the summary, we'll get to
14 some of the source material that would explain perhaps
10:57:10 15 one of the measurements or one way to discern when
16 Cisco's CLI became a de facto standard, for example, when
17 the industry press starts writing about it as such.
18 BY MR. NEUKOM:
19 Q. Okay. You -- although I'm -- I'm focused on a
10:57:27 20 few paragraphs right now, when I ask you any and all
21 questions, you're free to consult any aspect of your
22 report. So let me ask the question again, and if you
23 then need a minute to refer to your own report materials,
24 that's -- that's okay. There's no shame in referring
10:57:42 25 back to your report. Okay?

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10:57:45 1 A. Okay.

2 Q. Okay. Can you tell me at what point in time,
3 according to your testimony, at what point in time did
4 Cisco's market share grow to a point such that, as you've
10:58:00 5 opined, Cisco's CLI became widely accepted as an industry
6 standard?

7 A. Again, the same answer. I can't point to the
8 exact year, but maybe in some of the source material
9 there is a -- there's an indication when the market --
10:58:17 10 when the industry generally and the industry press starts
11 describing it as such, maybe we can find the year.

12 Q. Okay. But you have not disclosed any opinion
13 testimony or any testimony of any sort pursuant to which
14 you purport to tell us when this happened. Do I have
10:58:36 15 that right?

16 MS. McCLOSKEY: Object to form. Vague.
17 Overbroad.

18 THE WITNESS: Again, I don't believe that was
19 part of the objective of my report, no.

10:58:45 20 BY MR. NEUKOM:

21 Q. Okay. If you turn, please, to page 6 of your
22 report, I'm looking at paragraph 18. I'm looking at the
23 end of paragraph 18, the last sentence which reads:

24 "What was needed was a new way of
10:59:13 25 connecting networks, internetworking, that

10:59:17 1 permitted every connected device to communicate
2 with others as though they were all on the same
3 network."

4 Do you see what I'm referring to?

10:59:24 5 A. Yes.

6 Q. When you introduced and used the phrase
7 "internetworking," does that mean something different
8 than interoperability as you've used it in your report?

9 A. Yes, actually, it is different.

10:59:42 10 Q. Please define for me how you used the phrase or
11 the word "internetworking" for purposes of your testimony
12 in this case.

13 A. Well, my -- my usage of the term
14 "internetworking" is, I believe, one that's generally
10:59:57 15 accepted in the industry as simply being the connection
16 of networks to one another or, in other words, network of
17 networks.

18 Q. Okay. And so when you use the phrase
19 "internetworking," you mean some method or some
11:00:21 20 technology that permits diverse networks to communicate
21 with each other?

22 MS. McCLOSKEY: Objection. Misstates prior
23 testimony.

24 THE WITNESS: No. That's not what I said.

25 //

11:09:02 1 BY MR. NEUKOM:

2 Q. Okay.

3 A. So when I say a network device being able to
4 communicate to another, one to another, I'm speaking of
11:09:10 5 the end systems communicating one to the other.

6 Q. Got it. In paragraph 21 you discussed your
7 participation in a working group at the IETF?

8 A. Yes.

9 Q. And the working group that you participated in
11:09:34 10 was called the "Benchmark Working Group." Do I have that
11 right?

12 A. Yes.

13 Q. Was there -- was it the purpose of that working
14 group to propose or explore a common command line
11:09:51 15 interface for the networking industry?

16 MS. McCLOSKEY: Objection. Vague.

17 THE WITNESS: No.

18 BY MR. NEUKOM:

19 Q. If you turn to paragraph 33, it's on page 11, if
11:10:34 20 that helps. Are you with me?

21 A. Yes.

22 Q. Okay. In paragraph 33 you write:

23 "An industry standard prescribes a set of
24 product characteristics that are widely adopted
11:10:51 25 by either all or a significant portion of a

11:10:53 1 given industry."

2 Do you see what I'm referring to?

3 A. I do.

4 Q. Okay. And in this instance when you refer to an

11:11:02 5 industry standard, are you referring to a proprietary

6 industry standard, a de jure industry standard, or a

7 de facto industry standard as you have used those terms

8 in your report?

9 MS. McCLOSKEY: Objection. Assumes facts.

11:11:16 10 Vague.

11 THE WITNESS: Well, in this sentence, it could

12 be any -- any of those.

13 BY MR. NEUKOM:

14 Q. Okay. So any and every industry standard, as

11:11:25 15 you understand it, that industry standard must be widely

16 adopted by either all or a significant portion of a given

17 industry in order to be an industry standard?

18 MS. McCLOSKEY: Objection. Vague. Overbroad.

19 THE WITNESS: Yes, I'll stand by that.

11:11:44 20 BY MR. NEUKOM:

21 Q. Okay. How do I make a determination about

22 whether the portion of a given industry that has adopted

23 product characteristics, whether that is significant

24 versus insignificant enough to qualify as an industry

11:11:57 25 standard?

11:11:58 1 MS. McCLOSKEY: Objection. Vague. Overbroad.
2 Calls for speculation.
3 THE WITNESS: Well, one -- one obvious indicator
4 might simply be market share of a given vendor or
11:12:15 5 protocol stack or other aspects that involve the standard
6 in question.
7 BY MR. NEUKOM:
8 Q. What level of market share would be sufficient
9 on your opinion to establish that a particular technology
11:12:33 10 was an industry standard?
11 MS. McCLOSKEY: Objection. Vague. Ambiguous.
12 THE WITNESS: I think that would depend upon
13 what the alternatives were.
14 BY MR. NEUKOM:
11:12:55 15 Q. Also in paragraph 11 you use the phrase
16 "multi-vendor interoperability." Do you see what I'm
17 referring to?
18 A. I'm sorry. Paragraph 33?
19 Q. Oh, I'm -- pardon me. I'm such a dummy. I was
11:13:08 20 looking at the page number. Let me start over.
21 In paragraph 33 you also use the phrase
22 "multi-vendor interoperability." Do you see what I'm
23 referring to?
24 A. Yes.
11:13:17 25 Q. Can you explain for me what you mean by

11:13:19 1 multi-vendor interoperability?

2 A. I mean -- I mean for the interoperability of
3 like products from different manufacturers, different
4 vendors.

11:13:35 5 Q. Is multi-vendor interoperability another way of
6 referring to device-to-device interoperability that you
7 and I have discussed today?

8 MS. McCLOSKEY: Objection. Vague.

9 THE WITNESS: I wouldn't call it exactly a
11:13:47 10 synonym, but it certainly embodies the notion of an end
11 system being interoperable with another end system, but
12 more probably, it also refers to all systems in some way
13 being interoperable with others, implementing the same
14 or -- the same protocols.

11:14:09 15 BY MR. NEUKOM:

16 Q. Okay.

17 A. For example.

18 Q. The same network protocols?

19 A. Yes. Or I should add to that, potentially, as
11:14:28 20 well, the human interface; not just the network-to
21 network, but also network device to human.

22 Q. Okay. So as you've explained these concepts
23 today, multi-vendor interoperability includes not just
24 device-to-device interoperability, but also
11:14:46 25 human-to-device or device-to-human interoperability?

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1 evolved, it's changed, but...

2 BY MR. NEUKOM:

3 Q. In paragraph 34 when you refer to Cisco's CLI,
4 are you using that phrase, "Cisco's CLI," the way you
5 defined it and explained it in paragraph 1 of your
6 report?

7 MS. McCLOSKEY: Object to form. Asked and
8 answered.

9 THE WITNESS: Again, no. In this case I'm using
10 this in the generic sense, so each implementation over
11 time would, of course, be different. So not necessarily
12 in the current implementations, no.

13 BY MR. NEUKOM:

14 Q. Okay. So when you write or when you testify
15 that the Cisco CLI is a common method within the industry
16 by which to control and manage the network devices,
17 you're referring to numerous different versions of
18 Cisco's operating systems over time?

19 MS. McCLOSKEY: Objection. Misstates prior
20 testimony. Vague.

21 THE WITNESS: No, not their operating system.
22 I'm referring to the command line interface as
23 implemented by Cisco and as potentially implemented by
24 other vendors as the de facto industry standard,
25 synonymous.

11:18:41 1 BY MR. NEUKOM:

2 Q. And when you refer to Cisco's implementation of
3 a CLI, which implementation or implementations do you
4 have in mind?

11:18:48 5 MS. McCLOSKEY: Objection. Vague. Ambiguous.
6 Overbroad.

7 THE WITNESS: Again, I can't point to the
8 version number or even the year, but at some point in the
9 '90s I would say, in my opinion, is when the Cisco
10 generic CLI was in fact adopted by other vendors as a
11 de facto standard.

11:19:06 12 BY MR. NEUKOM:

13 Q. When you refer to "the Cisco generic CLI," can
14 you explain to me what you mean by that?

11:19:25 15 MS. McCLOSKEY: Objection. Vague.

16 THE WITNESS: Well, just as I said a minute ago,
17 that the generic CLI meaning their command line interface
18 as it existed at any given point in time without
19 referring to a specific version or release number.

11:19:42 20 BY MR. NEUKOM:

21 Q. Okay. So to put it mildly, you have opined that
22 the 500-plus multi-word command expressions that Cisco is
23 asserting against Arista for copyright infringement, that
24 at some point in the past those have become a de facto
11:20:03 25 industry standard? Do you agree with that statement?

11:20:05 1 A. No, not entirely.

2 Q. Why not?

3 A. Again, not all 500 of those commands or command
4 line elements existed in the '90s, so as -- as I believe
11:20:21 5 people normally speak about an industry standard CLI
6 synonymously with Cisco's CLI, in fact, that has evolved
7 and grown apparently over time, over a long time.

8 Q. I appreciate that clarification. Let me try
9 to -- this is not a trick question, so let me try to
11:20:44 10 rephrase it in a way that I think you'll agree with.

11 Your testimony includes the following: As we
12 sit here today, the 500-plus multi-word command
13 expressions that Cisco is asserting against Arista for
14 copyright infringement, those 500-plus multi-word command
11:21:08 15 expressions are, in your opinion, de facto industry
16 standard commands.

17 MS. McCLOSKEY: Objection. Vague. Ambiguous.

18 THE WITNESS: Without pre -- without placing a
19 precise number on the number of -- as to the number of
11:21:25 20 keywords or elements defined by the Cisco CLI, I would
21 say that the vast majority of vendors who make -- who
22 manufacture routers and switches that conform with and
23 market their products as industry -- having an industry
24 standard CLI, that they would match closely with those as
11:21:52 25 defined by Cisco.

11:21:54 1 BY MR. NEUKOM:

2 Q. And that's your testimony, that's your opinion
3 for all, every single one of the 500-plus multi-word
4 command expressions that Cisco is asserting against
11:22:05 5 Arista in this case?

6 MS. McCLOSKEY: Objection. Asked and answered.
7 Misstates testimony.

8 THE WITNESS: No, like I said a minute ago,
9 without putting a number on it. It's certainly possible
11:22:14 10 that some vendors don't implement all of the 500 or odd
11 commands, and in any event, none of this is really
12 addressed in my report.

13 BY MR. NEUKOM:

14 Q. Okay. So I take it it's your opinion that some
11:22:34 15 but not necessarily all of the 500-plus command
16 expressions that Cisco is asserting against Arista are,
17 at least as we sit here today, de facto industry standard
18 commands?

19 MS. McCLOSKEY: Objection. Vague.

11:22:50 20 THE WITNESS: I'm sorry. One more time. I
21 didn't --

22 BY MR. NEUKOM:

23 Q. Sure.

24 A. I didn't understand that.

11:22:54 25 Q. I'll tell you what I think is happening, what

11:22:56 1 I'm trying to get at. I've asked you a couple times now
2 whether you would confirm that it's your testimony that
3 the entire list of the 500-plus command expressions was,
4 under your testimony, de facto industry standard. And I
11:23:11 5 think twice you fairly enough have told me that you
6 didn't want to put a precise number on it in response to
7 that question.

8 I'm not going to ask you to agree with me
9 recounting of your testimony, but do you understand what
11:23:22 10 I'm referring to?

11 A. Yes.

12 Q. Okay. So I'm trying to make this an easier
13 question for you in a way by not asking you to confirm
14 that all 500, but rather just asking you to confirm that
11:23:31 15 it's your testimony that some of the 500-plus command
16 expressions that are at issue in this case are at least
17 as of today industry standard. Do you understand the
18 question?

19 A. Yes.

11:23:46 20 Q. Okay.

21 A. I understand the question.

22 Q. So now, with all that being said, let me try it
23 again from the top. New line.

24 It is your opinion that some portion -- at least
11:24:00 25 some portion of the 500-plus command expressions that

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11:24:06 1 Cisco is asserting against Arista in this case have
2 become de facto industry standard commands.
3 A. Yes.
4 Q. Okay. But it is not your opinion or your
11:24:20 5 testimony that all or every single one of those 500-plus
6 multi-word command expressions has become an industry
7 standard?
8 MS. McCLOSKEY: Objection. Misstates prior
9 testimony. Object to form. Vague. Overbroad.
11:24:35 10 THE WITNESS: So let me try this again. I did
11 not, as part of this report or at any time in researching
12 material for this report did I -- did I investigate
13 whether or not some number of Cisco's command keywords
14 are in fact implemented by others. Not in the scope of
11:24:57 15 what I was asked to do.
16 BY MR. NEUKOM:
17 Q. Okay. Why don't we -- let's turn back to
18 paragraph 1 of your report for a moment. And I'm looking
19 again, Mr. Seifert, at the sentence that begins "When I
11:25:29 20 write in reference to Cisco's CLI." Do you see what I'm
21 referring to?
22 A. I do.
23 Q. Okay. And in that sentence you refer to "the
24 identified CLI commands." Do you see what I'm referring
11:25:42 25 to?

11:25:43

1 A. Yes.

2 Q. When you wrote "the identified CLI commands,"

3 you're referring to the 500 plus multi-word command

4 expressions that Cisco has asserted against Arista for

11:25:55

5 copyright infringement?

6 A. Again, not putting a number on it, no.

7 Q. Have you formed an opinion one way or another

8 about whether the identified CLI commands have become

9 de facto industry standard commands?

11:26:16

10 MS. McCLOSKEY: Objection. Asked and answered.

11 Vague. Overbroad.

12 THE WITNESS: So let me say this one more time.

13 To the extent that other vendors have implemented similar

14 or potentially identical commands, keyword, actions,

11:26:37

15 responses to Cisco's, I refer to that as an industry

16 standard CLI, yes.

17 BY MR. NEUKOM:

18 Q. And is it in fact your opinion that the

19 "identified CLI commands" as we sit here today, that they

11:26:54

20 have in fact become de facto industry standard commands?

21 MS. McCLOSKEY: Objection. Asked and answered.

22 I'm not sure how many times you're going to ask the same

23 question, but it's been a number of times at this point.

24 MR. NEUKOM: As many as it takes to get a

11:27:06

25 responsive answer.

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11:27:07 1 MS. McCLOSKEY: I think he's responded numerous
2 times. Asked and answered. Vague. Ambiguous.

3 THE WITNESS: I -- same answer. I'm going to
4 just say that to the extent other vendors have
5 implemented the same or similar keywords to Cisco's,
6 that, to me, is the definition of an industry standard
7 CLI, yes.

8 BY MR. NEUKOM:

9 Q. So that's the process pursuant to which you
10 would go about forming an opinion about whether any
11 particular command expression had become a de facto
12 industry standard command. Am I hearing you right?

13 A. No, I don't think that's the process.

14 Q. Have you made a determination for any one of the
15 500-plus command expressions at issue in this case that
16 they have in fact been adopted by a sufficient number of
17 other vendors in the marketplace to become a de facto
18 industry standard?

19 MS. McCLOSKEY: Objection. Asked and answered.
20 Vague. Ambiguous.

21 THE WITNESS: I'm not sure that I understand
22 that question. Say that again? Have I an opinion?

23 BY MR. NEUKOM:

24 Q. Yeah. Have you formed an opinion?

11:28:14 25 MS. McCLOSKEY: Same objections.

11:28:15 1 THE WITNESS: Yes.

2 BY MR. NEUKOM:

3 Q. And for which of the identified CLI commands
4 have you formed an opinion that they have become at least
5 by the time we sit here today, that they have become a
6 de facto industry standard?

7 A. So, again, for purposes of this report, I wasn't
8 asked and nor did I investigate an exact number or count
9 how many such command word -- keywords that are on --
10 that were in dispute were implemented by other vendors.
11 I, in fact, believe there's another expert in this case
12 who will testify to that, not me.

13 Q. Okay. So you have not formed or disclosed an
14 opinion that any of Cisco's asserted command expressions
15 are, in fact, an industry standard. Do I have that
16 right?

17 A. No.

18 MS. McCLOSKEY: Objection. Vague. Ambiguous.
19 Asked and answered.

20 BY MR. NEUKOM:

21 Q. Which of Cisco's command expressions that it's
22 asserting in this case, for which of those command
23 expressions have you formed an opinion that they are, in
24 fact, industry standard commands?

25 MS. McCLOSKEY: Objection. Asked and answered.

11:29:24 1 Vague. Ambiguous.

2 THE WITNESS: I would say, to try to come at

3 this a different way, all of those command structures or

4 command formulations that are implemented by a number of

11:29:43 5 other vendors. I would say that defines an industry

6 standard. So yes, I do have -- I have formed an opinion

7 based on that.

8 BY MR. NEUKOM:

9 Q. Okay. And that opinion applies for every single

11:29:56 10 one of the 500-plus multi-word command expressions that

11 Cisco is asserting in this case?

12 MS. McCLOSKEY: Objection. Misstates prior

13 testimony.

14 THE WITNESS: No. In fact, I said just the

11:30:07 15 opposite.

16 BY MR. NEUKOM:

17 Q. Okay. Can you explain for me which command

18 expressions you have versus have not formed an opinion

19 that they have become de facto industry standard

11:30:19 20 commands?

21 MS. McCLOSKEY: Objection. Vague. Ambiguous.

22 THE WITNESS: Again, off the top of my head, no.

23 BY MR. NEUKOM:

24 Q. And even if not off the top of your head, if I

11:30:33 25 gave you five hours with your expert report to reflect on

11:30:36 1 it and read and reread it, you still wouldn't be able to
2 answer that question. Do I have that right?
3 MS. McCLOSKEY: Objection. Argumentative.
4 MR. NEUKOM: I don't mean for it to be
11:30:46 5 argumentative. This is not a challenge. I just -- I
6 don't think you've disclosed for me which of the 500-plus
7 command expressions are versus are not industry standard
8 in your opinion. And I just want to confirm that I'm
9 reading your report in the way you intend for it to be
11:31:02 10 read.
11 MS. McCLOSKEY: Is that a question?
12 MR. NEUKOM: Yes.
13 MS. McCLOSKEY: What's the question? I don't --
14 there's no question mark.
11:31:12 15 BY MR. NEUKOM:
16 Q. I'll start with a new one.
17 You do not in your report identify anywhere
18 which of the "identified CLI commands" are or are not
19 industry standard in your opinion. Do I have that right?
11:31:31 20 A. Yes.
21 Q. Okay. And for the, quote, "the asserted
22 hierarchies of those commands," you have not formulated
23 or disclosed an opinion about which of those hierarchies
24 are versus are not industry standard hierarchies?
11:31:47 25 MS. McCLOSKEY: Object to form. Vague.

11:31:49 1 Ambiguous.

2 THE WITNESS: I have not formed an opinion, no.

3 BY MR. NEUKOM:

4 Q. Okay. For "the command modes and prompts," that

11:31:58 5 Cisco is asserting against Arista in this case, I take it

6 you have not yet formed or disclosed an opinion about

7 which of those modes or prompts that Cisco's asserting

8 against Arista, which of those modes or prompts are

9 versus are not industry standard modes and prompts?

11:32:18 10 A. Again --

11 MS. McCLOSKEY: Object to form. Vague.

12 Ambiguous.

13 THE WITNESS: Again, I was not asked to identify

14 which ones. There's another expert who will testify to

11:32:28 15 which ones are the same or similar, so no, this report

16 does not address that.

17 BY MR. NEUKOM:

18 Q. Okay. And I take it it's also the case that you

19 haven't formed an opinion or disclosed an opinion about

11:32:43 20 which command response elements at issue in this case --

21 MS. McCLOSKEY: Same --

22 BY MR. NEUKOM:

23 Q. -- do versus do not qualify as industry standard

24 command response elements?

11:32:52 25 MS. McCLOSKEY: Same objections. Object to

11:32:54 1 form. Vague. Ambiguous.

2 THE WITNESS: I don't see where any of this
3 leads one to conclude that the industry generally thinks
4 of the Cisco CLI as an industry standard. It's written
11:33:14 5 about extensively, it can be easily identified over a
6 number of years of analysis by the industry press, by
7 customers, by analysts. So I'm not exactly where --
8 where you think you're going with this, but it's not
9 clear to me that it has anything to do with what is
11:33:34 10 generally referred to as an industry standard CLI being
11 essentially Cisco's CLI.

12 BY MR. NEUKOM:

13 Q. When you say "the Cisco CLI as an industry
14 standard," which Cisco CLI are you referring to?

11:33:49 15 MS. McCLOSKEY: Objection. Vague.

16 THE WITNESS: Again, the -- using the generic
17 sense of a command line interface at virtually any point
18 in time.

19 BY MR. NEUKOM:

11:34:01 20 Q. And when you refer to the Cisco CLI being an
21 industry standard, are you talking about all aspects of
22 Cisco's CLI?

23 MS. McCLOSKEY: Objection. Vague, ambiguous.
24 Misstates prior testimony.

11:34:15 25 THE WITNESS: I'm not sure that I understand

11:34:16 1 that question.

2 BY MR. NEUKOM:

3 Q. You understand that there are command
4 expressions available to a user with various versions of
11:34:26 5 IOS that have not been asserted against Arista for
6 purposes of copyright infringement?

7 MS. McCLOSKEY: Objection. Vague.

8 BY MR. NEUKOM:

9 Q. You understand that, I take it?

11:34:35 10 A. No, I didn't understand that.

11 Q. Okay. So prior to your report or today, you
12 never sat down and gained an understanding of which
13 aspects of Cisco's CLI were versus were not asserted
14 against Arista for purposes of copyright infringement?

11:34:56 15 MS. McCLOSKEY: Objection. Asked and answered
16 numerous times, and the witness has already answered this
17 question.

18 THE WITNESS: I -- I read the complaint, and to
19 the extent I understood the complaint, I did not
11:35:10 20 understand that there are elements of Cisco's CLI that
21 are not involved in the complaint. So no, it's not clear
22 to me that that was the case.

23 MR. NEUKOM: Okay.

24 MS. McCLOSKEY: And I'll just interpose an
11:35:20 25 objection that this calls for a legal conclusion.

1 BY MR. NEUKOM:

2 Q. So when you stated a minute or two ago that
3 Cisco's CLI has become an industry standard, you're
4 referring to each and every aspect of Cisco's CLI?

5 MS. McCLOSKEY: Objection. Misstates prior
6 testimony. Vague. Ambiguous. Object to form.

7 THE WITNESS: Actually, I am referring to it --
8 I refer to the Cisco CLI more broadly than that in the
9 sense that it -- understanding that it has evolved over
10 time.

11 BY MR. NEUKOM:

12 Q. Okay.

13 A. And has changed in each -- in each release.

14 Q. So let's take -- do you know -- or I think you
15 testified that at least no later than 2013 you sat down
16 and used a version of Cisco IOS to configure and manage a
17 network, I think when you were still at Avaya? Do I have
18 that right?

19 A. Yes. Approximately.

20 Q. And that's the last time you as a user or as a
21 network engineer that you've interacted with Cisco --
22 Cisco's CLI?

23 A. Yes.

24 Q. Okay.

25 MS. McCLOSKEY: Objection. Vague as to

11:36:35 1 "interacted."
2 BY MR. NEUKOM:
3 Q. Do you know which version of Cisco's IOS that
4 was or which version of the CLI that was?
11:36:41 5 A. No, I can't recall.
6 Q. Well, let's -- let's take that version of
7 Cisco's CLI, the one that you have used most recently, as
8 a starting point.
9 Can you tell me what aspects of that CLI,
11:36:55 10 namely, the last Cisco CLI that you personally have used,
11 do versus do not qualify as industry standard, in your
12 opinion?
13 MS. McCLOSKEY: Objection. Compound. Vague.
14 Ambiguous. Overbroad.
11:37:10 15 THE WITNESS: No, I can't recall specifics. No.
16 BY MR. NEUKOM:
17 Q. Is it your opinion that each and every command
18 expression that was available to you as a Cisco IOS user
19 in 2013 is an industry standard command?
11:37:25 20 MS. McCLOSKEY: Objection. Vague. Ambiguous.
21 Overbroad.
22 THE WITNESS: No, that's not my opinion. I
23 don't have the opinion on a specific version that I can't
24 recall, so no.
25 //

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11:37:37 1 BY MR. NEUKOM:

2 Q. Okay. And if I asked you to tell me your
3 opinion about any particular command expression in any
4 version of Cisco's CLI and to tell me if that was an
11:37:48 5 industry standard or not, you haven't formed any such
6 opinion?

7 MS. McCLOSKEY: Objection.

8 THE WITNESS: Again, outside the scope of my
9 research and -- and this report.

11:38:01 10 BY MR. NEUKOM:

11 Q. It is in the scope of your report, is it not, to
12 form an opinion and report the opinion about whether
13 Cisco's CLI has, at least prior to Cisco filing this
14 lawsuit, becoming a de facto industry interface in the
11:38:32 15 networking industry?

16 MS. McCLOSKEY: Objection. Vague.

17 BY MR. NEUKOM:

18 Q. Do I have that right?

19 A. I -- yes.

11:38:38 20 Q. And you have formed an opinion that Cisco's CLI
21 has become a de facto industry standard interface in the
22 network industry. Do I have that right?

23 A. Generically, Cisco's CLI over time has become a
24 de facto industry standard, yes.

11:38:55 25 Q. Okay. But if I ask you to tell me which aspects

11:39:01 1 of Cisco's CLI are versus are not an industry standard, I
2 take it you have not formed an opinion about that?
3 MS. McCLOSKEY: Objection. Asked and answered
4 many times in various different ways. It's also vague.
11:39:18 5 THE WITNESS: The specifics of those command
6 expressions, no. Again, generically, yes.
7 BY MR. NEUKOM:
8 Q. And when you refer to Cisco's CLI generically,
9 you don't have any particular IOS version number in mind?
11:39:40 10 MS. McCLOSKEY: Objection. Vague.
11 THE WITNESS: Not that I can recall, no.
12 BY MR. NEUKOM:
13 Q. You don't have any particular command
14 expressions in mind?
11:39:48 15 MS. McCLOSKEY: Same objection.
16 THE WITNESS: No.
17 BY MR. NEUKOM:
18 Q. Okay. In paragraph 34 of your complaint [sic],
19 on page 12 --
11:40:54 20 MS. McCLOSKEY: Do you mean his report?
21 MR. NEUKOM: Yes. I do.
22 THE WITNESS: I'm sorry. Which paragraph?
23 BY MR. NEUKOM:
24 Q. Paragraph 34 of your report, you refer to "a
11:41:10 25 common set of protocols for the Internet." Do you see

11:41:13 1 what I'm referring to?

2 A. Yes.

3 Q. Is that the same thing as what you've elsewhere
4 referred to as network protocols?

11:41:21 5 MS. McCLOSKEY: Objection. Vague. Overbroad.

6 THE WITNESS: Yes.

7 BY MR. NEUKOM:

8 Q. Okay. In paragraph 36 you discuss what you
9 refer to as proprietary standards or vendor proprietary
11:41:37 10 standards. Do you see what I'm referring to?

11 A. Yes.

12 Q. And you've proposed -- well, off the cuff or by
13 reading your report, however you want to do it, can you
14 define for me what constitutes a vendor proprietary
11:41:53 15 standard?

16 A. Yes.

17 Q. Please do so.

18 A. Proprietary standards are created by a vendor to
19 ensure that products developed by different groups, for
11:42:11 20 example, different engineering organizations perhaps for
21 different markets, will in fact operate either
22 consistently or cooperatively with one another so that
23 the resulting system, in the case of a computer supplier,
24 computer vendor, can ensure that they have a product set
11:42:36 25 that is consistent with one another and potentially

11:42:41 1 shared with or -- or mimicked by third-party vendors.

2 Q. And this definition of vendor proprietary
3 standards that you've put in your report and that you've
4 explained for me today, where did you get that definition
11:42:56 5 from?

6 MS. McCLOSKEY: Objection. Vague. Ambiguous.

7 THE WITNESS: Again, I think this is a
8 generally-accepted definition, so my experience,
9 essentially.

11:43:09 10 BY MR. NEUKOM:

11 Q. Okay. Can you identify for me anybody else
12 who's ever used this phrase or term "vendor proprietary
13 standards" the way that you have in your report?

14 MS. McCLOSKEY: Objection. Vague, ambiguous.
11:43:22 15 Calls for speculation.

16 THE WITNESS: Not off the top of my head, no.

17 BY MR. NEUKOM:

18 Q. Okay. If I asked you to identify for me any
19 other document or publication, any written communication
11:43:31 20 in any form using the vendor proprietary standards
21 definition that you've put in your report, could you do
22 that for me?

23 MS. McCLOSKEY: Same objections.

24 THE WITNESS: Not without some additional
11:43:43 25 research, no.

11:43:44 1 BY MR. NEUKOM:

2 Q. Okay. So for purposes of preparing your report,
3 you formulated a definition of what you called "vendor
4 proprietary standards," based on your long and
11:43:55 5 illustrious career in the networking industry. Is that
6 fair?

7 MS. McCLOSKEY: Objection. Vague.

8 THE WITNESS: And in the computer industry. I
9 did work for Digital for a period of time.

11:44:03 10 BY MR. NEUKOM:

11 Q. Okay. But you did not -- you did not undertake
12 any effort to confirm whether your understanding, your
13 conception of this phrase "vendor proprietary standard,"
14 was shared by others?

11:44:18 15 MS. McCLOSKEY: Objection. Asked and answered.
16 The witness has already testified that he believes it's
17 just --

18 MR. NEUKOM: No. No. No. No. No. No. No.
19 You can "ask and answered." You cannot restate his
11:44:27 20 testimony as you want it to be on the record.

21 Q. The question is to you, sir.

22 A. So again, I believe this is a generally-accepted
23 industry term for the idea of -- for the notion of vendor
24 proprietary standards.

11:44:44 25 Q. Okay. And if I asked you for some source of

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11:44:46 1 information to verify that it is in fact a
2 generally-accepted industry term in the way that you're
3 using it in this report, I take it as you sit here today
4 you're not able to point me to any documentation, any --
11:45:00 5 any authority for that?

6 MS. McCLOSKEY: This question is asked and
7 answered.

8 THE WITNESS: Again, off the top of my head, no.

9 BY MR. NEUKOM:

11:45:19 10 Q. In paragraph 38, starting on page 13 of your
11 report, you explain the -- what you understand to be a
12 de facto standard. Do you see what I am referring to?

13 A. Yes.

14 Q. Okay. This conception of what is or is not a
11:45:39 15 de facto standard, I take it your understanding and usage
16 of that -- of that term is based on your experience in
17 the networking and computer industries?

18 MS. McCLOSKEY: Objection. Vague.

19 THE WITNESS: Yes.

11:45:57 20 BY MR. NEUKOM:

21 Q. Are you aware of anyone else in the computer or
22 the networking industry that has ever used or understood
23 a de facto standard in the way you've explained in your
24 report?

11:46:06 25 MS. McCLOSKEY: Objection. Asked and answered.

11:46:10 1 THE WITNESS: Again, I don't recall a specific
2 source, nor can I point at one off the top of my head.

3 BY MR. NEUKOM:

4 Q. Okay. In preparing your report, did you take

11:46:23 5 any efforts to try to confirm that your understanding of

6 what is or is not sufficient for a technology to become a

7 de facto standard was shared by others?

8 MS. McCLOSKEY: Asked and answered multiple

9 times at this point.

11:46:41 10 THE WITNESS: I would say that if it's commonly

11 understood, I don't believe it was worth the time to

12 investigate whether others thought the same.

13 BY MR. NEUKOM:

14 Q. In paragraph 39, among other places, you refer

11:47:07 15 to the IETF. I take it you're aware of the fact that the

16 IETF has never adopted any specific command expression as

17 an industry standard? Is that safe to say?

18 MS. McCLOSKEY: Objection. Vague. Assumes

19 facts.

11:47:26 20 THE WITNESS: Not to my knowledge.

21 BY MR. NEUKOM:

22 Q. Okay. And the IETF has never adopted any

23 command response for any networking product as an

24 industry standard. Is that safe to say?

11:47:41 25 MS. McCLOSKEY: Same objections.

11:47:43 1 THE WITNESS: No. Actually, that's not safe to
2 say.

3 BY MR. NEUKOM:

11:47:51 4 Q. Which -- for which command response has the IETF
5 adopted an industry standard?

6 A. So the IETF deals with behavior and
7 specifications for protocol standards which do in fact
8 contain command responses. If you're asking me about CLI
9 command responses, then the answer is no.

11:48:12 10 Q. Fair enough. Thank you.

11 So to the best of your knowledge, the IETF has
12 never adopted an industry standard for a CLI command
13 response?

14 MS. McCLOSKEY: Objection. Vague.

11:48:24 15 THE WITNESS: Again, not to my knowledge.

16 BY MR. NEUKOM:

17 Q. To your knowledge, has Cisco ever proposed to
18 the IETF that its CLI become an industry standard or be
19 adopted as an industry standard?

11:48:38 20 A. No, not --

21 MS. McCLOSKEY: Objection. Calls for
22 speculation.

23 THE WITNESS: No, not to my knowledge.

24 BY MR. NEUKOM:

11:48:43 25 Q. To your knowledge, has Cisco ever proposed that

12:44:10 1 question. How. What does that mean?

2 BY MR. NEUKOM:

3 Q. Can you explain for me how Cisco's statements
4 about its CLI being industry standard informs your
12:44:21 5 opinion that aspects of Cisco's CLI are de facto industry
6 standard?

7 MS. McCLOSKEY: Objection. Misstates prior
8 testimony and assumes facts.

9 THE WITNESS: Well, the how, I think, is
12:44:37 10 self-evident. If it's on their -- in their literature,
11 in their promotional materials or on their website.
12 What's not clear to me of course, unknowable to me is the
13 why they would make that claim.

14 BY MR. NEUKOM:

12:45:01 15 Q. If I'm hearing your testimony today accurately,
16 you do have and are offering a well-formed opinion that
17 Cisco's CLI generally has become a de facto industry
18 standard?

19 MS. McCLOSKEY: Objection. Misstates prior
12:45:18 20 testimony. Overbroad.

21 THE WITNESS: To which I would add for routers
22 and switches, yes.

23 BY MR. NEUKOM:

24 Q. Okay. But if I then ask you -- and I promise
12:45:30 25 I'm not going to take 20 minutes of your time doing this

12:45:32 1 over again, I just want to make sure I'm hearing you
2 accurately. If I ask you which aspects of Cisco's CLI
3 are or are not industry standard, you haven't formed any
4 opinions on that?

12:45:48 5 MS. McCLOSKEY: Jay, I'm not going to instruct
6 the witness not to answer, but you've asked this question
7 I don't know how many times. I don't think it's
8 appropriate to keep asking him the same question over and
9 over again. He has answered this question.

12:46:06 10 THE WITNESS: Umm --

11 MS. McCLOSKEY: It also misstates his testimony.

12 THE WITNESS: I'm sorry, could you rephrase?
13 One more time?

14 BY MR. NEUKOM:

12:46:19 15 Q. Is it accurate that, while you are offering an
16 opinion that Cisco's CLI generally has become an industry
17 standard, you have not formed an opinion about which
18 aspects of Cisco's CLI are versus are not industry
19 standard?

12:46:36 20 MS. McCLOSKEY: Objection. Asked and answered.
21 Vague. Misstates prior testimony.

22 THE WITNESS: So as I -- as I previously
23 indicated, I wasn't asked to specify exactly which
24 portions of Cisco's CLI have become or generally known or
12:46:55 25 accepted as an industry standard, but that is the work of

12:46:58 1 another expert witness.

2 BY MR. NEUKOM:

3 Q. Okay. You're aware that Cisco has offered one
4 or more operating systems with a CLI where the operating
12:47:11 5 system is referred to as IOS?

6 MS. McCLOSKEY: Objection. Calls for
7 speculation. Vague.

8 THE WITNESS: I'm aware that IOS has evolved
9 over a number of years, yes.

12:47:22 10 BY MR. NEUKOM:

11 Q. Are you also aware of the Cisco operating system
12 referred to as IOS XR?

13 MS. McCLOSKEY: Objection. Calls for
14 speculation. Assumes facts.

12:47:32 15 THE WITNESS: No, I'm not familiar with IOS XR.

16 BY MR. NEUKOM:

17 Q. Are you familiar with the operating testimony
18 IOS XE?

19 MS. McCLOSKEY: Same objections.

12:47:39 20 THE WITNESS: No.

21 BY MR. NEUKOM:

22 Q. Are you familiar with the Cisco operating system
23 NX-OS?

24 MS. McCLOSKEY: Same objections. Calls for
12:47:46 25 speculation.

12:47:47 1 THE WITNESS: Yes, vaguely.

2 BY MR. NEUKOM:

3 Q. Okay. Are you aware that NX-OS has a CLI?

4 MS. McCLOSKEY: Objection. Calls for
12:47:55 5 speculation.

6 THE WITNESS: Yes.

7 BY MR. NEUKOM:

8 Q. Do you have an opinion about whether the CLI for
9 Cisco's NX-OS is industry standard?

10 MS. McCLOSKEY: Objection. Vague.

11 THE WITNESS: To the extent to my understanding
12 of the CLI contained and implemented in NX-OS is similar
13 to or derivative of the IOS CLI, I would say yes.

14 BY MR. NEUKOM:

12:48:21 15 Q. Have you -- in preparing your report, did you
16 take any efforts to familiarize yourself with the CLI for
17 NX-OS?

18 MS. McCLOSKEY: Objection. Vague. Overbroad.
19 Vague as to "any efforts."

12:48:32 20 THE WITNESS: As I mentioned earlier, I have not
21 explored a specific implementation of any Cisco CLSI --
22 CLI in a few years.

23 BY MR. NEUKOM:

24 Q. Okay. When you say that Cisco's CLI generally
12:48:48 25 has become an industry standard, are you referring to the

12:48:54 1 CLIs that Cisco offers for all four of these operating
2 systems, in particular, NX-OS, IOS, IOS XR, and IOS XE?

3 MS. McCLOSKEY: Objection. Vague. Overbroad.
4 Calls for speculation.

12:49:12 5 THE WITNESS: Specifically to those operating
6 systems? As I said earlier, to the extent that they
7 implement what would be generically referred to as a
8 Cisco CLI, yes. But the specifics, no.

9 BY MR. NEUKOM:

12:49:23 10 Q. What is generically referred to as the Cisco
11 CLI?

12 MS. McCLOSKEY: Objection. Calls for
13 speculation. Vague.

14 THE WITNESS: So I think it would be the command
12:49:38 15 set that is -- that is defined by or mentioned in Cisco
16 training materials, in their promotional literature, on
17 their website, and the product brochures.

18 BY MR. NEUKOM:

19 Q. When you... when you refer to what were
12:50:16 20 "generically referred to as the Cisco CLI," are you
21 referring to any aspects of Cisco's CLI other than
22 command sets?

23 MS. McCLOSKEY: Objection. Vague.

24 THE WITNESS: Well, the CLI defines not just
12:50:38 25 commands but -- or actions, but also objects on which the

12:50:42 1 commands are intended to -- to effect and, as well, the
2 report or responses by the CLI.

3 BY MR. NEUKOM:

4 Q. Have you formed an opinion about whether any
12:50:57 5 aspect of the CLI for NX-OS has become an industry
6 standard?

7 MS. McCLOSKEY: Objection. Vague.

8 THE WITNESS: Again, not specific to NX-OS.

9 BY MR. NEUKOM:

12:51:06 10 Q. Okay. Have you formed an opinion about whether
11 any aspect of the CLI for IOS XR has become an industry
12 standard?

13 MS. McCLOSKEY: Same objection. Also, asked and
14 answered.

12:51:18 15 THE WITNESS: Not -- not specific to IS -- IOS
16 XR, no.

17 BY MR. NEUKOM:

18 Q. Have you formed any opinion about whether any
19 aspect of the CLI for IOS XE has become an industry
12:51:28 20 standard?

21 MS. McCLOSKEY: Objection. Vague. Asked and
22 answered.

23 THE WITNESS: Specific to IOS XE? No.

24 BY MR. NEUKOM:

12:51:34 25 Q. Have you formed an opinion about whether any

12:51:36 1 aspect of the CLI for Cisco IOS has become an industry
2 standard?

3 MS. McCLOSKEY: Objection. Vague.

4 THE WITNESS: Not to any specific version of or
12:51:48 5 release of IOS, no.

6 BY MR. NEUKOM:

7 Q. Okay. When you testified earlier today that you
8 referred to some CCIE training materials -- do you
9 remember that testimony?

12:52:16 10 A. Yes.

11 Q. Okay. Were those CCIE training materials that
12 you referred to in the process of preparing your report,
13 were those for NX-OS, IOS, IOS XR or IOS XE?

14 MS. McCLOSKEY: Objection. Vague as to which
12:52:36 15 materials specifically you're referring to.

16 THE WITNESS: I -- I don't recall. It's been a
17 while.

18 BY MR. NEUKOM:

19 Q. Are you aware in this lawsuit that Cisco is
12:52:44 20 alleging that Arista has taken CLI aspects from each of
21 those four different operating systems?

22 MS. McCLOSKEY: Objection. Calls for a legal
23 conclusion. Calls for speculation. Vague as to "taken
24 CLI aspects."

12:53:02 25 THE WITNESS: Given my source for Cisco's

1 objection is the public filing of the complaint, I don't
2 recall what it said.

3 BY MR. NEUKOM:

4 Q. Okay. So as you sit here today, putting aside
5 my questions to you, as you sit here today you were not
6 previously made aware of the fact that Cisco is asserting
7 copyright infringement allegations against Arista based
8 on CLI content from four different operating systems?

9 MS. McCLOSKEY: Objection. Misstates prior
10 testimony. Calls for a legal conclusion. Vague.
11 Overbroad.

12 THE WITNESS: I don't recall that the complaint
13 mentions -- mentions the four operating systems
14 specifically. No, I don't recall that.

15 BY MR. NEUKOM:

16 Q. Okay. And to the extent that you reviewed
17 background materials to familiarize or refamiliarize
18 yourself with Cisco's CLI, you did that by virtue of
19 looking at various CCIE training materials but you don't
20 remember which operating system those training materials
21 pertain to?

22 MS. McCLOSKEY: Objection. Misstates prior
23 testimony. Overbroad. Vague.

24 THE WITNESS: Well, in addition to the CCIE
25 training materials, there's also the product-specific

13:00:57 1 time Cisco filed this complaint. Are you with me so far?

2 A. Yes.

3 Q. Okay. And that's accurate, what I just said?

4 A. That's a statement. Is that a question?

13:01:08 5 Q. Yeah. It is in fact the case, isn't it, that
6 you have formed an opinion that Cisco's CLI had become a
7 de facto industry standard on or about the date that
8 Cisco filed this lawsuit?

9 A. Yes.

13:01:19 10 Q. Okay. And if I ask you which aspects of Cisco's
11 CLI have versus have not become an industry standard,
12 I've asked you that a few times today and I think your
13 testimony is you didn't parse it down to that level.
14 Your testimony is that Cisco's CLI generally or
15 generically has become an industry standard on or before
16 the date this lawsuit was filed.

17 MS. McCLOSKEY: Objection. Misstates prior
18 testimony. I'm quite certain that the record will
19 reflect how --

13:01:47 20 MR. NEUKOM: No, the record will reflect what it
21 reflect. Don't coach this witness by doing that.

22 MS. McCLOSKEY: I am not coaching the witness,
23 but you're rephrasing in your own words his testimony
24 over and over again.

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1 BY MR. NEUKOM:

2 Q. The question, sir, is to you.

3 A. So again, I've formed my opinion of Cisco's CLI
4 as an industry standard based on a number of sources not
5 specific to any particular operating system or
6 implementation, but rather as a generic set of commands
7 and keywords and responses that has -- that has evolved
8 over time.

9 BY MR. NEUKOM:

10 Q. Okay. And if I ask you what portions of Cisco's
11 CLI offerings -- and this is an asked and answered, I
12 just want to make sure we're on the same page.

13 If I ask you to explain to me which portions of
14 Cisco's CLI offerings are versus are not de facto
15 industry standards, I take it you have not formed an
16 opinion on that?

17 MS. McCLOSKEY: Sorry. Did you say this is or
18 isn't asked and answered? It says "isn't," but I heard
19 you to say is.

20 MR. NEUKOM: This has been asked and answered.
21 I just want to make sure we're on the same page here.

22 THE WITNESS: And I will say again that it was
23 beyond -- or that was not in the scope of my report.

24 BY MR. NEUKOM:

25 Q. Okay. In paragraph 44 of your report on page

13:03:47 1 16, towards the bottom of the page you refer to "rules of
2 the road." Do you see what I'm referring to?

3 A. Yes.

13:04:09 4 Q. Okay. And it's your testimony that the rules of
5 the road or network protocols are necessary for computer
6 communications over a network of networks. Do I have
7 that right?

8 MS. McCLOSKEY: Mr. Seifert, please take the
9 time you need to put that phrase into context in your
13:04:22 10 report.

11 THE WITNESS: So when I say "rules of the road,"
12 I mean the -- the specifics or the requirements and the
13 technical specifications for how a network device, be it
14 an intermediate system or an end system, communicates
13:04:47 15 with one another over -- over the ARPAnet originally and
16 subsequently to the Internet, that those specifications
17 have undergone numerous revisions, updates, and a number
18 of implementations by a large number of participants.

19 BY MR. NEUKOM:

13:05:05 20 Q. Okay. As of the date that you served your
21 report, you understand that -- strike that.

22 A sharing of network protocols or what you refer
23 to as rules of the road between devices or networks, that
24 is necessary, I take it, to ensure what we've referred to
13:05:33 25 today as device-to-device interoperability?

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13:43:52 1 [REDACTED]
[REDACTED]
[REDACTED]

4 MS. McCLOSKEY: Objection. Vague.

13:44:03 5 THE WITNESS: Yes.

6 MR. NEUKOM: Why don't we take a short break. I
7 may be done.

8 THE VIDEOGRAPHER: Off the record, 1:44 p.m.
9 (Recess taken from 1:44 to 1:51 p.m.)

13:51:40 10 THE VIDEOGRAPHER: On the record, 1:51 p.m.

11 BY MR. NEUKOM:

12 Q. Can you explain for me the difference between a
13 technology being widely adopted versus being a de facto
14 standard?

13:51:58 15 MS. McCLOSKEY: Objection. Calls for
16 speculation. Vague.

17 THE WITNESS: That distinction by itself is hard
18 to make.

19 May we go back for a second? I'd like to amend
13:52:15 20 or clarify something I said earlier.

21 BY MR. NEUKOM:

22 Q. Sure.

23 A. Relative to paragraph 78 --

24 Q. Yes?

13:52:23 25 A. -- on page 34.

13:52:30 1 Q. Yes?

2 A. The last sentence.

3 Q. Yes.

4 A. The long list of vendors starting with Adtran?

13:52:37 5 Q. Yes.

6 A. I omitted -- I meant -- failed to mention beyond

7 the footnote's references to deposition and -- or these

8 two depositions, I should say, there is also in my

9 appendix examples of similarities among a number of

13:53:02 10 vendors with the Cisco CLI, so that also served as, if

11 you will, source material for my conclusion and my

12 opinion.

13 BY MR. NEUKOM:

14 Q. So let's go, for example, to Appendix C. Are

13:53:23 15 you with me?

16 A. Yes.

17 Q. Did you prepare this table?

18 A. This table, I did not.

19 Q. Did you undertake any investigation to verify

13:53:32 20 the contents of this table?

21 MS. McCLOSKEY: Objection. Vague.

22 THE WITNESS: Not -- again, not within the scope

23 of my report.

24 BY MR. NEUKOM:

13:53:39 25 Q. Okay.

13:53:40 1 A. So no.

2 Q. So just for example, I'm looking at the first
3 page of Appendix C. If I look at let's just say the
4 first line, user EXEC for the Cisco command mode. Do you
13:53:59 5 see what I'm referring to?

6 A. Yes.

7 Q. And this table, this appendix represents that
8 the Adtran AOS command mode for that -- if you call it
9 comparable mode -- is Basic (command security level). Do
13:54:16 10 you see what I'm referring to?

11 A. Yes.

12 Q. Okay. You don't -- you didn't review any
13 materials or do anything to verify whether that is in
14 fact the corresponding command mode within Adtran AOS?

13:54:29 15 MS. McCLOSKEY: Objection. Vague.

16 THE WITNESS: I did not sit in front of an
17 Adtran device to do so, no.

18 BY MR. NEUKOM:

19 Q. Okay. So this -- the contents of Appendix C
13:54:41 20 were provided to you by counsel and as best you can
21 remember you did not take efforts to verify its accuracy?

22 A. I read through them and I compared them with,
23 you know, other -- other sources. To that extent, you
24 know, that was what I did.

13:54:57 25 Q. Can you identify for me what sources you used

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13:55:00 1 when you were checking or reviewing the contents of
2 Appendix C?

3 MS. McCLOSKEY: Objection. Vague and very
4 compound. If you want to point to something specifically
13:55:08 5 in Exhibit C.

6 THE WITNESS: Well, as I recall, the -- the
7 exhibits cited earlier in the -- the footnote, for sure.

8 BY MR. NEUKOM:

9 Q. Namely, Arista's interrogatory answer.

13:55:22 10 A. Yes.

11 Q. Two pages of testimony from Cato, and a Force10
12 document?

13 A. Yes. Force10 document.

14 Q. Okay. Did you review anything else to ensure or
13:55:35 15 to verify the contents of Appendix C?

16 MS. McCLOSKEY: Objection. Vague. Compound,
17 mainly as to "review anything else."

18 THE WITNESS: Not that I recall.

19 MR. NEUKOM: Bear with me. My stuff is out of
13:56:06 20 order. I want to next go to Exhibit C.

21 MS. McCLOSKEY: I thought we were just on
22 Exhibit C.

23 MR. NEUKOM: Oh, we were on Appendix -- pardon
24 me. You're right. We were on Appendix C.

13:56:23 25 MS. McCLOSKEY: It looks like Appendix C has a

13:56:26 1 cover sheet that says Exhibit C.

2 BY MR. NEUKOM:

3 Q. Okay. If you could please turn to -- well, this

4 does get confusing, doesn't it?

13:57:08 5 Please turn to -- there's a page which has

6 nothing on the page except the word "Exhibit D," and the

7 next page following that begins a large table which has

8 the header Appendix H.BR. Do you see what I'm referring

9 to?

13:57:25 10 A. Yes.

11 Q. Okay. And that table that begins on the page

12 following -- how do you want to refer to this? Should we

13 call it Exhibit D?

14 A. Sure. That's fine.

13:57:38 15 Q. Okay. Did you prepare the table that's here in

16 Exhibit D?

17 A. No, I did not.

18 Q. This exhibit was provided to you by counsel?

19 A. Yes.

13:57:51 20 Q. Did you undertake any steps to confirm the

21 accuracy of the contents of Exhibit D?

22 MS. McCLOSKEY: Objection. Vague.

23 THE WITNESS: Well, as I recall, I did look at

24 Brocade's website and their user guide that's -- or

13:58:10 25 information available there to sort of spot-check a

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13:58:13 1 couple of commands, yes. That's it.

2 BY MR. NEUKOM:

3 Q. Can you tell me for which of these commands you

4 spot-checked?

13:58:20 5 MS. McCLOSKEY: Objection.

6 BY MR. NEUKOM:

7 Q. For accuracy?

8 MS. McCLOSKEY: Objection. Vague.

9 THE WITNESS: No, I can't really tell you which

13:58:24 10 ones. I just remember doing a few, not exhaustively.

11 BY MR. NEUKOM:

12 Q. Okay. Three? Five?

13 MS. McCLOSKEY: Objection. The witness has

14 already testified that he doesn't remember. He remembers

13:58:33 15 doing a few.

16 THE WITNESS: You know, a handful. That's all I

17 can characterize it as.

18 BY MR. NEUKOM:

19 Q. For the rest of them, for the contents of

13:58:43 20 Exhibit D, you trusted counsel to have collected and

21 represented this information accurately?

22 MS. McCLOSKEY: Objection. Vague.

23 THE WITNESS: Yes, I did.

24 BY MR. NEUKOM:

13:58:58 25 Q. Exhibit E. And again, this is a little

13:59:01 1 confusing because it looks like the first substantive
2 page of Exhibit E has the header Appendix H.DE, but I'm
3 willing to call it Exhibit E if you are.
4 A. Sure.
13:59:14 5 Q. Okay.
6 A. Fine.
7 Q. You didn't prepare Exhibit E?
8 MS. McCLOSKEY: Objection.
9 THE WITNESS: No.
13:59:20 10 MS. McCLOSKEY: Vague.
11 BY MR. NEUKOM:
12 Q. Exhibit E was prepared -- was provided to you by
13 Arista's counsel in this case?
14 A. Yes.
13:59:30 15 Q. Did you review any materials to confirm or to
16 verify the accuracy of what's represented here in Exhibit
17 E?
18 MS. McCLOSKEY: Objection. Vague.
19 THE WITNESS: I did view a Dell-supplied
13:59:47 20 You Tube video which has a side-by-side comparison of a
21 number of configuration commands, so again, to the extent
22 that that validates, I don't know, some number.
23 BY MR. NEUKOM:
24 Q. Sure.
13:59:57 25 A. 10 or fewer perhaps.

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13:59:59 1 Q. Okay. So we'll call that a spot-check. You
2 spot-checked about 10 of the commands --
3 A. Right.
4 Q. -- listed on this table to make sure they were
14:00:11 5 accurate?
6 A. It's quite convincing.
7 Q. And for the other, I don't know, 400 or 500-plus
8 commands, you did not review any source materials or take
9 any efforts to confirm its accuracy?
14:00:21 10 A. Again, not -- I wasn't asked to do that.
11 Q. Okay. Do you have any familiarity with one or
12 more CLIs offered by Juniper?
13 MS. McCLOSKEY: Objection. Vague.
14 THE WITNESS: I'm not familiar with their CLI
14:00:36 15 exhaustively, no, just the names and...
16 BY MR. NEUKOM:
17 Q. Okay. For example, Junos?
18 A. Junos, yes.
19 Q. Okay. But you don't -- you're not familiar with
14:00:46 20 the content or substance, if you will, of any of
21 Juniper's CLI?
22 MS. McCLOSKEY: Objection. Asked and answered.
23 Assumes facts.
24 THE WITNESS: Well, Juniper historically has
14:00:57 25 participated in a different market than either any of my

14:01:04 1 companies or, to my knowledge, Cisco, so that is to say
2 the enterprise market.

3 BY MR. NEUKOM:

4 Q. Um-hmm.

14:01:12 5 A. Juniper has historically gone after a service
6 provider, so typically they do their own thing different
7 from everyone else.

8 Q. Okay. So you haven't reviewed any CLI from
9 Juniper but you -- you understand they compete in what
14:01:28 10 you consider different markets, therefore you wouldn't be
11 surprised if it was different than Cisco's CLI?

12 MS. McCLOSKEY: Objection. Mischaracterizes
13 testimony.

14 BY MR. NEUKOM:

14:01:36 15 Q. I don't mean to be mischaracterizing your
16 testimony. I think what I've just said is a pretty
17 pro-Arista thing. I just want to make sure I understand
18 you.

19 A. I think that summarizes it, yeah.

14:01:46 20 Q. Okay. Have you ever heard the phrase
21 "intersystem consistency"?

22 A. No.

23 Q. The phrase or the concept of intersystem
24 consistency has no meaning within the networking
14:01:58 25 industry, as far as you know?